

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANNY TABB,

Plaintiff,

v.

NAPHCARE, et al.,

Defendants.

CASE NO. 3:21-cv-05541-LK-TLF

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on United States Magistrate Judge Theresa L. Fricke's Report and Recommendation ("R&R") recommending that the Court deny Plaintiff Danny Tabb's motion for default against Defendants Patti Jackson-Kidder and Kevin Benton. Dkt. No. 150.¹ Having reviewed the R&R, the remaining record, and the applicable law, the Court adopts the R&R and denies Mr. Tabb's motion for entry of default. Dkt. No. 145.

In July 2021, Mr. Tabb, who is proceeding *pro se* and *in forma pauperis*, initiated this action under 42 U.S.C. § 1983 alleging that he has been denied medical care and reasonable

¹ In the same order, Judge Fricke denied Mr. Tabb's motion for service by the U.S. Marshals. *Id.* at 1–2. That issue is not before the Court.

1 accommodations for his disability while incarcerated at the Pierce County Jail. Dkt. No. 1-1. The
2 Court granted him leave to amend, and he filed an amended complaint. Dkt. Nos. 14–15. The Court
3 then dismissed the amended complaint and granted Mr. Tabb leave to file a second amended
4 complaint, which he did. Dkt. Nos. 118, 121. Mr. Tabb filed a motion for default in November
5 2023 contending that Mr. Benton and Ms. Jackson-Kidder “fail[ed] to plead or otherwise defend”
6 as required. Dkt. No. 145 at 1; *see also* Dkt. No. 146 at 2 (stating that those Defendants have
7 “failed to file an answer or a Rule 12 motion and to date still have not.”).

8 A district court may enter default when a party “has failed to plead or otherwise defend[.]”
9 Fed. R. Civ. P. 55(a). When a plaintiff files an amended complaint, a response “must be made
10 within the time remaining to respond to the original pleading or within 14 days after service of the
11 amended pleading, whichever is later.” Fed. R. Civ. P. 15(a)(3).

12 Judge Fricke recommends that the Court deny Mr. Tabb’s motion because Mr. Benton and
13 Ms. Jackson-Kidder are not in default; they timely filed a motion to dismiss for failure to state a
14 claim 14 days after Mr. Tabb filed his second amended complaint. Dkt. No. 150 at 2–3; *see also*
15 Dkt. No. 121 (Aug. 10, 2023 amended complaint); Dkt. No. 124 (Aug. 24, 2023 motion to dismiss).
16 Mr. Tabb did not file objections to the R&R.

17 The Court agrees with Judge Fricke that Mr. Benton and Ms. Jackson-Kidder are not in
18 default because they filed a timely response to the second amended complaint. Specifically, those
19 Defendants’ August 24, 2023 motion to dismiss was a timely response to the second amended
20 complaint, and they have not failed to plead or otherwise defend. Dkt. No. 124; Fed. R. Civ. P.
21 4(d), 15(a)(3), 55(a).

22 The Court therefore ADOPTS Judge Fricke’s R&R, Dkt. No. 150, and DENIES Mr. Tabb’s
23 motion for default, Dkt. No. 145.

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to Mr. Tabb at his last known address.

3
4 Dated this 19th day of January, 2024.

5 

6

Lauren King
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24